



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GROVER SELLERS
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ATTORNEY GENERAL

Honorable L. D. Bakman
County Attorney, Montague County
Montague, Texas

Dear Sir:

Opinion No. 0-6099
Re: Whether Article 259, Vernon's
Annotated Penal Code, applies
to county clerk's offices where
and when absentee votes are
being cast under the facts stated.

Your letter of July 4, 1944, requesting the opinion
of this department on the question stated therein is as follows:

"Under article 259, Penal Code, 'Whoever shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, shall be fined not exceeding one hundred dollars.' I would like to have an opinion as to whether this article also applies to the County Clerk's office where and when absentee votes are being cast.

"In this County the present County Clerk is asking for re-election and he has one deputy that electioneers with every person who comes into the County Clerk's office to vote an absentee ballot. I would like to know if this deputy is violating the above article. I will appreciate an opinion on this question at the earliest date possible as the absentee voting has already started."

Article 259, Vernon's Annotated Penal Code, provides:

"Whoever shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, or who shall hire any vehicle for the purpose of conveying voters to the polling place, or shall wilfully remove any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars."

Article 2956, Vernon's Annotated Civil Statutes, per-

tains to absentee voting. Subdivision 10 of said statute provides:

"The county clerks, their deputies and officers acting under this article shall be considered as judges or officers of election within the scope of Articles 215 to 231, inclusive, of the Penal Code of Texas, and all amendments thereto, and be punishable as in said articles respectively provided in the case of judges or officers of the election."

Generally speaking, the Penal Statutes shall be construed according to the plain import of the language in which they are written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law. After carefully considering the foregoing statutes, you are respectfully advised that it is the opinion of this department that Article 259, Vernon's Annotated Penal Code, has no application to the question submitted in your inquiry. However, your inquiry does not request the opinion of this department, and we express no opinion, as to whether such acts of the deputy are violative of the prohibition contained in Articles 215-231 of the Penal Code.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW:EP:wc

APPROVED JUL 13, 1944
s/Geo. P. Blackburn (ACTING)
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman